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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,598	09/10/2003	Miri Seiberg	JBP-430-CIP1	5368

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EXAMINER

GEMBEH, SHIRLEY V

ART UNIT	PAPER NUMBER
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1628

NOTIFICATION DATE	DELIVERY MODE
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03/29/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/659,598	Applicant(s) SEIBERG ET AL.	
	Examiner SHIRLEY V. GEMBEH	Art Unit 1628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 73-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 79-83 is/are allowed.
- 6) ☒ Claim(s) 73-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's argument filed on 2/2/11 has been fully considered but they are not deemed to be persuasive.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 73-86 are pending in this office action.
4. Applicant's arguments with respect to claims 73-86 rejected under 35 U.S.C. 103(a) as being unpatentable over Jin (CN166960A published 12/10/1997) in view of Meybeck et al. (US 5,034,228) and further in view of Kennedy (US Patent 5,034,228) have been considered, Kennedy is withdrawn from the rejection. Examiner with respect to claims 73-78 still maintains that the claims are obvious over Jin and Meybeck. The rejection is set forth below. Claims 79-83 are free of art because the prior art fails to teach the concentrations of the soybean extract in the method of treating acne.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 73-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meybeck et al. (US 5,034,228) in view of Jin (CN166960A published 12/10/1997).

Meybeck et al. teach treating acne with a soya bean product extract (i.e., soya lecithin which is reasonably from a whole or entire soybean) and tretinoin (as required by instant claims 73-74 and 76-78 are met see col. 3, lines 36-38 and lines 61-64). With regard to claim 75, the Meybeck teaches tretinoin as vitamin A, (see col. 2, line 42).

However Meybeck fails to teach that their soya bean extract soya lecithin is nondenatured as required by instant claims 73 and 75

Jin teaches a composition comprising soybean protein powder that is made through the process of crushing (therefore non-denatured since the only process involved is crushing of the soybean (i.e., whole soybean) for treating the face, wherein after several application of the mask, the acne is obviously decreased (see translated abstract, as required by instant claims 73 and 75 (in part) and 74, 76-78). Because Jin teaches that the powders of these natural products are mixed, it is reasonable to conclude that the mixing involves the use of water, and therefore the powder will form a paste when in contact with a liquid or a solvent. Thus it is reasonable to conclude that Jin teaches soybean paste as well (as required by instant claims 74, 76, 77-78). It should be noted that Jin teaches the powder is made through the process of crushing the soy seed to form a powder.

However Jin fails to teach the composition for reducing/treating acne further comprises tretinoin and fails to teach the effective amounts of the soybean (as required instant claims 79).

It would have been obvious to one of ordinary skill in the art to have been motivated to substitute Meybeck's soy lecithin for Jin's soya powder with a reasonable expectation of success because in both teachings a soy extract is used because it is considered a substitution of equivalence wherein one soy extract is substituted for another. Additionally, one of ordinary skill in the art would have been motivated to substitute Meybeck's soy extract that involves extraction with for Jin's because Jin's soy extract would have been cost effective in preparing because no chemical are used in the Jin's process. Therefore substituting Meybeck's chemically extracted soy lecithin for

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Jin's soy powder with no chemicals would have resulted in using of a nondenatured soybean trypsin inhibitor as claimed.

Allowable Subject Matter

6. Claims **79-86** are allowable over prior art because the prior art fails to teach the recited claimed amounts.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHIRLEY V. GEMBEH whose telephone number is (571)272-8504. The examiner can normally be reached on 8:30 -5:00, Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BRANDON FETTEROLF can be reached on 571-272-2919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S.V.G./
Examiner, Art Unit 1618
3/18/11

/Brandon J Fetterolf/
Supervisory Patent Examiner, Art Unit 1628